



General Assembly

January Session, 2009

***Raised Bill No. 920***

LCO No. 3451

\*03451\_\_\_\_\_LAB\*

Referred to Committee on Labor and Public Employees

Introduced by:  
(LAB)

***AN ACT CLARIFYING PENSION OBLIGATIONS OF CONTRACTORS  
AND SUBCONTRACTORS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 49-42 of the general statutes is amended by adding  
2 subsection (d) as follows (*Effective October 1, 2009*):

3 (NEW) (d) It shall be a complete defense to any claim under  
4 subsection (a) of this section that the claimant (1) failed to comply with  
5 the requirements of subsection (b) of section 38a-290, as amended by  
6 this act, or (2) otherwise has been paid or settled the claim in exchange  
7 for the written waiver described in subdivision (2) of subsection (b) of  
8 section 38a-290, as amended by this act.

9 Sec. 2. Section 49-33 of the general statutes is amended by adding  
10 subsection (j) as follows (*Effective October 1, 2009*):

11 (NEW) (j) No claim for delinquent employee pension or wage  
12 payments shall result in a lien under the provisions of this section.

13 Sec. 3. Subsection (f) of section 31-53 of the general statutes is  
14 repealed and the following is substituted in lieu thereof (*Effective*

15    *October 1, 2009*):

16        (f) Each employer subject to the provisions of this section or section  
17    31-54 shall (1) keep, maintain and preserve such records relating to the  
18    wages and hours worked by each person performing the work of any  
19    mechanic, laborer and worker and a schedule of the occupation or  
20    work classification at which each person performing the work of any  
21    mechanic, laborer or worker on the project is employed during each  
22    work day and week in such manner and form as the Labor  
23    Commissioner establishes to assure the proper payments due to such  
24    persons or employee welfare funds under this section or section 31-54,  
25    regardless of any contractual relationship alleged to exist between the  
26    contractor and such person, and (2) submit monthly, electronically or  
27    by mail, to the contracting agency a certified payroll that shall consist  
28    of a complete copy of such records accompanied by a statement signed  
29    by the employer that indicates (A) such records are correct; (B) the rate  
30    of wages paid to each person performing the work of any mechanic,  
31    laborer or worker and the amount of payment or contributions paid or  
32    payable on behalf of each such person to any employee welfare fund,  
33    as defined in subsection (h) of this section, are not less than the  
34    prevailing rate of wages and the amount of payment or contributions  
35    paid or payable on behalf of each such person to any employee welfare  
36    fund, as determined by the Labor Commissioner pursuant to  
37    subsection (d) of this section, and not less than those required by the  
38    contract to be paid; (C) the employer has complied with the provisions  
39    of this section and section 31-54; (D) each such person is covered by a  
40    workers' compensation insurance policy for the duration of such  
41    person's employment, which shall be demonstrated by submitting to  
42    the contracting agency the name of the workers' compensation  
43    insurance carrier covering each such person, the effective and  
44    expiration dates of each policy and each policy number; (E) the  
45    employer does not receive kickbacks, as defined in 41 USC 52, from  
46    any employee or employee welfare fund; and (F) pursuant to the  
47    provisions of section 53a-157a, the employer is aware that filing a  
48    certified payroll which the employer knows to be false is a class D

49 felony for which the employer may be fined up to five thousand  
 50 dollars, imprisoned for up to five years, or both. [This subsection shall  
 51 not be construed to prohibit a general contractor from relying on the  
 52 certification of a lower tier subcontractor, provided the general  
 53 contractor shall not be exempted from the provisions of section 53a-  
 54 157a if the general contractor knowingly relies upon a subcontractor's  
 55 false certification.] Any person or entity is entitled to rely on the  
 56 certification of an employer and be exempt from the provisions of  
 57 section 53a-157a, 31-53a or 49-42, as amended by this act, provided the  
 58 person or entity shall not be exempt from those provisions if the  
 59 person or entity knowingly relied upon a false certification or colluded  
 60 with the filer of the false certification. Notwithstanding the provisions  
 61 of section 1-210, the certified payroll shall be considered a public  
 62 record and every person shall have the right to inspect and copy such  
 63 records in accordance with the provisions of section 1-212. The  
 64 provisions of subsections (a) and (b) of section 31-59 and sections 31-66  
 65 and 31-69 that are not inconsistent with the provisions of this section  
 66 or section 31-54 apply to this section. Failing to file a certified payroll  
 67 pursuant to subdivision (2) of this subsection is a class D felony for  
 68 which the employer may be fined up to five thousand dollars,  
 69 imprisoned for up to five years, or both.

70 Sec. 4. Section 38a-290 of the general statutes is repealed and the  
 71 following is substituted in lieu thereof (*Effective October 1, 2009*):

72 (a) No insurance company doing business in this state shall limit the  
 73 time within which any suit shall be brought against it or any claim  
 74 shall be submitted to arbitration on (1) a fidelity or surety bond to a  
 75 period less than three years from the time when the loss insured  
 76 against occurs; (2) a construction performance bond to a period less  
 77 than three years from the date on which the principal last performed  
 78 work under the contract; (3) a construction payment bond to a period  
 79 less than three years from the date on which the claimant last  
 80 performed work or supplied material for which the claim is made; and  
 81 (4) all other policies to a period less than one year from the time when

82 the loss insured against occurs. This section shall not apply to suits and  
83 arbitration claims under the uninsured or underinsured motorist  
84 provisions of a motor vehicle insurance policy.

85 (b) Notwithstanding the provisions of subdivision (3) of subsection  
86 (a) of section 49-42, as amended by this act, any claimant on a  
87 construction payment bond, including a claim under said section 49-  
88 42, seeking to recover payment for unpaid pension funds shall:

89 (1) As a condition precedent to any claim, first have: (A) Maintained  
90 accurate records identifying the employee names and project where  
91 the wages were incurred on which the alleged unpaid pension benefits  
92 are based; and (B) not later than thirty days after any delinquency in  
93 payment of pension funds, provided written notice via certified mail to  
94 (i) the fee owner of the project, and (ii) the general contractor or  
95 construction manager, identifying the names of the affected  
96 employees, the delinquent amounts for each employee, and  
97 identification of the delinquent employer.

98 (2) Upon request by the fee owner of the premises, general  
99 contractor or construction manager of the project, and after receiving  
100 payment for the alleged delinquency or a settled amount thereof,  
101 provide a reasonable written waiver of claims for the alleged  
102 delinquent funds to the owner, general contractor or construction  
103 manager, as the case may be.

104 Sec. 5. Section 42-158j of the general statutes is amended by adding  
105 subsection (e) as follows (*Effective October 1, 2009*):

106 (NEW) (e) A contractor, construction manager or subcontractor may  
107 condition payment to a lower tier contractor or subcontractor on the  
108 receipt of the waivers described in subdivision (2) of subsection (b) of  
109 section 38a-290, as amended by this act, but only to the extent  
110 reasonably necessary to secure payment for delinquent pension funds.

111 Sec. 6. Section 49-41a of the general statutes is amended by adding

112 subsection (e) as follows (*Effective October 1, 2009*):

113 (NEW) (e) A construction manager, contractor or subcontractor may  
114 condition payment to a lower tier contractor or subcontractor on the  
115 receipt of the waiver described in subdivision (2) of subsection (b) of  
116 section 38a-290, as amended by this act, but only to the extent  
117 reasonably necessary to secure payment for delinquent pension funds.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	49-42
Sec. 2	<i>October 1, 2009</i>	49-33
Sec. 3	<i>October 1, 2009</i>	31-53(f)
Sec. 4	<i>October 1, 2009</i>	38a-290
Sec. 5	<i>October 1, 2009</i>	42-158j
Sec. 6	<i>October 1, 2009</i>	49-41a

Section 1	<i>October 1, 2009</i>	49-42
Sec. 2	<i>October 1, 2009</i>	49-33
Sec. 3	<i>October 1, 2009</i>	31-53(f)
Sec. 4	<i>October 1, 2009</i>	38a-290
Sec. 5	<i>October 1, 2009</i>	42-158j
Sec. 6	<i>October 1, 2009</i>	49-41a

***Statement of Purpose:***

To allow the recipients of certified payrolls from employer to rely on such forms and to require trustees or managers of certain pension benefit programs to issue notice when benefit contributions are delinquent.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*